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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DAVID C. MILLS and	:	CIVIL ACTION-LAW
DEBORAH K. MILLS, h/w	:	
Plaintiffs	:	NO.
	:	
v.	:	JURY TRIAL DEMANDED
	:	
VICTOR SALDANA,	:	
and EXACT VALVE SOLUTIONS, INC.	:	
Defendants	:	

**NOTICE AND PETITION FOR REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendants, Victor Saldana and Exact Valve Solutions, Inc., by and through their attorneys, Kelly Grimes Pietrangelo & Vakil, P.C., submit this Notice and Petition for Removal from the Court of Common Pleas of Luzerne County, Pennsylvania, in which the above-captioned matter now pending, to the United States District Court for the Middle District of Pennsylvania. In support of said Petition, Defendants state as follows:

**Nature of Action and Procedural History**

1. On May 23, 2018, Plaintiffs filed a civil action Complaint in the Court of Common Pleas of Luzerne County, Pennsylvania, alleging that Plaintiff, David C. Mills sustained person injuries arising out of a motor vehicle accident that occurred on January 25, 2016. A true and correct copy of Plaintiff's Complaint is attached hereto as Exhibit "A".

**Timeliness of Removal**

2. 28 U.S.C. § 1446 provides that: “The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.” 28 U.S.C. § 1446(b)(1).

3. It is well-established that the thirty (30) day time limit for removal pursuant to 28 U.S.C. § 1446 is procedural, Ariel Land Owners, Inc., v. Dring, 351 F.3d 611, 614 (3d Cir. 2003), and that a case may not be remanded for failure to comply with the thirty (30) day time limit absent a timely motion. Id. Therefore, any delay in the filing of this Notice for Removal would not result in “substantial delay and disruption” of the litigation. Id. at 615.

4. Plaintiffs herein filed on Complaint on May 23, 2018 and forwarded same to counsel for Defendants on May 24, 2018.<sup>1</sup> Plaintiffs’ Complaint is the first pleading which sets forth the claim for relief upon which this action is based.

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<sup>1</sup>Plaintiffs had previously filed a Writ of Summons on November 27, 2017, which was reissued on at least two (2) occasions and then served on Defendant, Victor Saldana on March 18, 2018. A Writ of Summons of the quality and character as currently employed under Pennsylvania procedures, even if the Writ of Summons and state court docket sheet indicate that diversity jurisdiction may ultimately exist, is not an “initial pleading setting forth a claim for relief” subject to removal. Gervel v. L & J Talent, 805 F. Supp. 308, 310 (E.D. Pa. 1992)

5. This Notice of Removal is timely filed in compliance with 28 U.S.C. § 1446(b) as it is filed within thirty (30) days from May 24, 2018, the date the Complaint was served on counsel for Defendants.

**Diversity of Citizenship**

6. Plaintiffs assert that they reside at 31 Brazil Street, City of Wilkes-Barre, Luzerne County, Pennsylvania. See Exhibit "A" at paragraph 1.

7. Plaintiffs allege that the Defendant, Victor Saldana resided at 602 North Reynolds Street, Alice Texas. See Exhibit "A" at paragraph 2.

8. Plaintiffs allege that Defendant, Exact Valve Solutions, Inc., is a business with a principal place of business at 445 44<sup>th</sup> Street, Corpus Christi, Texas 78405. See Exhibit "A" at paragraph 3.

9. Pursuant to 28 U.S.C. § 1332, complete diversity exists between the Plaintiffs and the Defendants in this action.

**Amount in Controversy**

10. Defendants assert that the amount in controversy exceeds seventy five thousand dollars, (\$75,000.00) exclusive of interest and costs.<sup>2</sup>

11. In their Complaint, Plaintiffs allege that as a result of the subject accident, Plaintiff, David C. Mills, sustained injuries which are or may be serious, severe, painful

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<sup>2</sup>Although Defendants deny liability and contend that Plaintiff cannot recover under the claims in the Complaint, the allegations and relief sought by Plaintiff are to be considered for purposes of removal only, in determining the value of the claims and the amount in controversy. Samuel-Bassett v. Kia Motors America, Inc., 143 F.Supp.2d 503,506 (E.D. Pa. 2001).

and permanent which required treatment and care including, but not limited to, treatment with various doctors, physical therapy, x-rays; MRI, medicinal therapy and surgery. See Exhibit "A" at paragraph 23 and its subparagraphs, paragraphs 24 through 31, paragraph 40 and its subparagraphs.

12. As a result of these injuries, Plaintiffs allege that Plaintiff, David C. Mills, required medical care and treatment; that he has incurred expenses for the medical attention and care; that he will be obliged to continue to expend such sums for an indefinite period of time in the future. See Exhibit "A" at paragraphs 25 through 30.

13. Plaintiffs seek not only compensation for the foregoing injuries, but they have alleged that Defendants acted with recklessness, pleading the required language for a demand of punitive damages at the time of trial. See Exhibit "A".

14. Although Plaintiffs make a demand for an amount in excess of \$50,000, based upon a review of the allegations and relief sought by the Plaintiffs, including Plaintiff's alleged extensive and permanent injuries, surgery, as well as the potential claim for punitive damages, Defendants assert that the amount in controversy exceeds \$75,000. See Exhibit "A" at *ad damnum clause*.

#### **Plea for Removal**

15. There is complete diversity of citizenship and the amount in controversy exceeds the jurisdictional requirement of \$75,000; therefore, this Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1332 and removal of this action to this Court is proper pursuant to 28 U.S.C. § 1441.

16. The Luzerne County Court of Common Pleas is located within the Middle District of Pennsylvania. Removal is proper to this Court pursuant to 28 U.S.C. § 1441(a) because it is the “district and division embracing the place where such action is pending.”

17. Pursuant to 28 U.S.C. § 1446(b), all Defendants consent to the removal of this action.

18. Defendants have, contemporaneously with the filing of this Notice of Removal, given written notice to all counsel and unrepresented parties.

19. Promptly after filing this Notice of Removal in this Honorable Court, a copy of this Notice of Removal will be filed with Prothonotary of the Court of Common Pleas of Luzerne County, Pennsylvania, in accordance with 28 U.S.C. § 1446(d).

**WHEREFORE**, Defendants, Victor Saldana and Exact Valve Solutions, Inc., respectfully request that this civil action be removed from the Court of Common Pleas of Luzerne County to the United States District Court for the Middle District of Pennsylvania.

**KELLY GRIMES PIETRANGELO & VAKIL, P.C.**

DATE: 6/19/18



**DONALD M. GRIMES, ESQUIRE**  
**36 EAST SECOND STREET**  
**P.O. BOX 1048**  
**MEDIA, PA 19063**  
**(610) 565-0600**  
**COUNSEL FOR DEFENDANTS**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DAVID C. MILLS and  
DEBORAH K. MILLS, h/w

Plaintiffs

v.

VICTOR SALDANA,  
and EXACT VALVE SOLUTIONS, INC.

Defendants

: CIVIL ACTION-LAW

: NO.

: JURY TRIAL DEMANDED

**CERTIFICATE OF SERVICE**


I, Donald M. Grimes, Esquire, hereby certify that on this 19<sup>th</sup> day of June, 2018, I mailed Defendants' Notice and Petition for Removal to counsel for Plaintiffs via First Class, U.S. Mail, with postage pre-paid as follows:

Catherine A. McGovern, Esquire  
SENAPE & ASSOCIATES  
612-614 Main Street  
P.O. Box 179  
Freeland, PA 18224-0179

***COUNSEL FOR PLAINTIFFS***

KELLY GRIMES PIETRANGELO & VAKIL, P.C.

BY:

  
**DONALD M. GRIMES, ESQUIRE**  
ATTORNEY FOR DEFENDANTS  
VICTOR SALDANA and  
EXACT VALVE SOLUTIONS, INC.

IN THE UNITED STATES DISTRICT COURT  
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DAVID C. MILLS and  
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CIVIL ACTION-LAW

NO.

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**PROOF OF FILING**

I, Donald M. Grimes, Esquire, hereby certify that a copy of the foregoing Notice for  
Removal has been filed with the Prothonotary of the Court of Common Pleas of Luzerne County.

Date: 6/19/18

KELLY GRIMES PIETRANGELO & VAKIL, P.C.



DONALD M. GRIMES, ESQUIRE  
36 EAST SECOND STREET  
P.O. BOX 1048  
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COUNSEL FOR DEFENDANTS

KELLY GRIMES PIETRANGELO & VAKIL, P.C.

BY: **DONALD M. GRIMES, ESQUIRE**

ATTORNEY I.D.: 38371

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**NOTICE OF FILING NOTICE OF REMOVAL**

TO: Catherine A. McGovern, Esquire  
SENAPE & ASSOCIATES  
612-614 Main Street  
P.O. Box 179  
Freeland, PA 18224-0179  
*Attorney for Plaintiffs*

**PLEASE TAKE NOTICE** that, Defendants, Victor Saldana and Exact Valve Solutions, Inc., , in the matter of David C. Mills and Deborah K. Mills h/w v. Victor Saldana and Exact Valve Solutions, Inc., originally pending in the Court of Common Pleas in the County of Luzerne, Pennsylvania, under No. 2017-13117, hereby files in the United States District Court for the Middle District of Pennsylvania, its Notice of Removal of said cause to the Middle District of Pennsylvania.



A true and correct copy of the Notice of Removal is attached hereto and served herewith.

KELLY GRIMES PIETRANGELO & VAKIL, P.C.

DATE: 6/19/18

A handwritten signature in black ink, appearing to read "Donald M. Grimes", is written over a horizontal line.

DONALD M. GRIMES, ESQUIRE  
36 EAST SECOND STREET  
P.O. BOX 1048  
MEDIA, PA 19063  
(610) 565-0600  
COUNSEL FOR DEFENDANTS